HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition Nos.6496, 6776, 6777, 6778, 6835, 6925 & 9257 of 2006

W.P.No.6496 of 2006

Between:

Kakinada Municipal Corporation,
Rep. by its Commissioner, Kakinada,
East Godavari District.

... Petitioner

And

G.M.P. Swaroop

... Respondent

W.P.No.6776 of 2006

Between:

Kakinada Municipal Corporation,
Rep. by its Commissioner, Kakinada,
East Godavari District.

... Petitioner

And

P. Ganga Rao

... Respondent

W.P.No.6777 of 2006

Between:

Kakinada Municipal Corporation,
Rep. by its Commissioner, Kakinada,
East Godavari District.

... Petitioner

And

Smt.G. Narsamamba

… Respondent

W.P.No.6778 of 2006

Between:

Kakinada Municipal Corporation,
Rep. by its Commissioner, Kakinada,
East Godavari District.

… Petitioner

And

A. Satya Prasad

… Respondent

W.P.No.6925 of 2006

Between:

Kakinada Municipal Corporation,
Rep. by its Commissioner, Kakinada,
East Godavari District.

… Petitioner

And

Smt.E. Rukmini Kumari

… Respondent

W.P.No.9257 of 2006

Between:

Kakinada Municipal Corporation,
Rep. by its Commissioner, Kakinada,
East Godavari District.

… Petitioner

And

J.D. Ananda Kumar and another

… Respondents

W.P.No.6835 of 2006

Between:

Kakinada Municipal Corporation,
Rep. by its Commissioner, Kakinada,
East Godavari District.

… Petitioner

And

K. Venkateswara Rao

… Respondent

:: ORDER::

Counsel for the Petitioner
in all the writ petitions: Shri C.V. Mohan Reddy, Advocate General

Counsel for the Respondent
in all the writ petitions: Shri M. Surender Rao

June 15, 2007

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Per G.S. Singhvi, CJ

These petitions are directed against orders dated 4.10.2005, 16.11.2005 and 8.3.2006 passed by the Andhra Pradesh Administrative Tribunal (for short, 'the Tribunal') in O.A. Nos.5887 of 2005, 612 of 2005, 3327 of 2005, 4394 of 2005, 5888 of 2005, 5891 of 2005 and 909 of 2006, whereby suspension of the non-official respondents who are holding the posts of Attender, Junior Assistant, Senior Assistant and Town Planning Supervisor in the services of Kakinada Municipal Corporation (for short, 'the Corporation') was either quashed or stayed.

For convenience sake, we have taken the facts from the record of Writ Petition No.6496 of 2006 and made a brief reference to the orders of suspension passed in other cases.

Respondent – G.M.P. Swaroop was initially appointed in the services of Eluru Municipality. In December 2004, he was transferred to Kakinada Municipality. He joined the new Municipality on 30.12.2004 and was posted as G-3 Clerk in Town Planning Section. In 2005, the District Audit Officer submitted report showing misappropriation of Rs.26,68,356/- by various officials, who were posted on G-1, G-2, G-3 and G-4 seats of the Town Planning Section of the Municipality, which had, in the meanwhile, been abolished vide G.O.Ms.No.10, M.A., dated 6.1.2005 issued by the State Government under Section 3(1)(a) of the Andhra Pradesh

Municipalities Act, 1965 and declared as larger urban area vide G.O.Ms.No.11, M.A., dated 6.1.2005 issued under Section 3(1) of the Andhra Pradesh Municipal Corporations Act, 1994 (for short, 'the 1994 Act').

On receipt of the audit report, the State Government directed the Commissioner and Director of Municipal Administration, Andhra Pradesh to file a complaint with the Director General of Police, CBCID, Hyderabad. Simultaneously, the Commissioner of the Corporation issued order dated 20.4.2005, whereby he placed the respondent under suspension.

Shri P. Ganga Rao (respondent in Writ Petition No.6776 of 2006), who was then working as Junior Assistant and posted as G-2 Clerk in the Town Planning Section, was suspended vide order dated 19.4.2005 passed by the Commissioner. Smt. G. Narsamamba (respondent in Writ Petition No.6777 of 2006), who was also working as Junior Assistant and posted as G-4 Clerk in the Town Planning Section, was suspended vide order dated 19.4.2005. Shri A. Satya Prasad (respondent in Writ Petition No.6778 of 2006), who was working as Attender in the Town Planning Section, was placed under suspension vide order dated 20.4.2005. Shri K.Venkateswara Rao (respondent in Writ Petition No.6835 of 2006), who was posted as Junior Assistant - Shroff in the Accounts Section, was suspended vide order dated 20.4.2005. Smt.E. Rukmini Kumari (respondent in Writ Petition No.6925 of 2006), who was holding the post of Senior Assistant and was posted as G-1 Clerk in the Town Planning Section, was suspended vide order dated 19.4.2005. Shri J.D. Ananda Kumar (respondent No.1 in Writ Petition No.9257 of 2006), who was then holding the post of Town Planning Supervisor, was suspended by the Commissioner vide order dated 20.4.2005. After

seven days, the State Government issued G.O.Rt.No.580, M.A. (E2), dated 27.4.2005 under Rule 8(1) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short, 'the 1991 Rules') again suspending him on the ground that an enquiry was proposed to be held against him.

The respondents challenged their suspension by filing applications under Section 19 (1) of the Administrative Tribunals Act, 1985, which were registered as O.A.Nos.3327, 4394, 5888, 5887, 5891, 6152 of 2005 and 909 of 2006. They relied on the provisions of Sections 130 and 132 of that Act and Rule 18 of the Andhra Pradesh Municipal Corporation Service Rules, 1987 and pleaded that the Commissioner could not have placed them under suspension by exercising power under Section 141 of the Hyderabad Municipal Corporations Act, 1955 (for short, 'the 1955 Act') because, being the employees of the Town Planning Department, they were under the control of the State Government.

In the counter filed by the Commissioner of the Corporation, it was pleaded that the applicants were placed under suspension because they were found prima facie responsible for misappropriation of huge amount of more than Rs.26 lakhs. He relied on Section 141 and G.O.Ms.No.168, M.A., dated 28.12.1981 issued by the State Government under Section 235 (1) read with Section 139 of the 1955 Act and claimed that being the appointing authority, he had the power to place the applicants under suspension.

By orders dated 4.10.2005 and 16.11.2005 passed in O.A.No.5887 and 6152 of 2005, the Tribunal stayed the suspension of Smt.E. Rukmini Kumari and Shri J.D. Ananda Kumar respectively. The other O.As. were allowed by the Tribunal by common order dated 08.03.2006 and suspension of the applicants of those cases

were quashed on the premise that only the State Government is competent to take disciplinary action against them. The Tribunal relied on Sections 117, 130 and 132 of the 1955 Act and held:

> … Section 117 of the Act deals with functions of the several Municipal authorities under the Municipal Corporation and it further states that the respective functions of the several Municipal authorities shall be such as are specifically provided under this Act or the rules or bye-laws made thereunder. If this Section is read with Section 130, the powers as far as with respect to the applicants' appointment or disciplinary action should be taken from Section 130 (2) of the Act as they belong to Local Government Service in view of Section 132 of the Act as the Chief Town Planner or Town Planning Officers come under the establishment of Local Government Service. Therefore, the power with respect to such service i.e. Local Government Service is vested with the Government itself under Section 130 (2) of the Act, but not with the respondents herein."

The Tribunal rejected the contention of the Standing Counsel appearing for the Corporation that in view of notification dated 28.12.1991, the Commissioner is competent to initiate disciplinary action against the respondents and, therefore, he had the power to suspend them. The Tribunal opined that the ad hoc rules framed by the State Government under Section 235 (1) read with Section 139 of the 1955 Act empowers the Commissioner to make appointment, but the power to take disciplinary action vests in the State Government.

Shri C.V. Mohan Reddy, learned Advocate General relied on Sections 14(1) and 16(6) of the Andhra Pradesh Municipal Corporations Act, 1994 (for short, 'the 1994 Act'), Section 141 of the 1955 Act, Rules 2 and 18 of the Andhra Pradesh Municipal Corporation Service Rules, 1987 (for short, 'the Rules') and the ad hoc rules framed under Section 235(1) read with 139 of the 1955 Act and argued that in his capacity as disciplinary authority of the employees holding different posts in the clerical cadres including

Junior Assistants and Senior Assistants, class IV posts and Town Planning Supervisor, the Commissioner is competent to suspend the non-official respondents and the Tribunal committed a jurisdictional error by staying and nullifying the orders of suspension. He further argued that the non-official respondents cannot be treated as members of the Local Government Service under Section 130(1) of the 1955 Act because none of them is holding any of the posts specified in Schedule-C and none of them was appointed against the establishment sanctioned under Section 132(1) of the 1955 Act.

Shri M. Surender Rao defended the orders under challenge and argued that the Tribunal did not commit any illegality by staying and/or quashing the suspension of the non-official respondents because all of them are employed in Town Planning Division of the Corporation and their service conditions are governed by the provisions of Section 130 read with Section 132 of the 1955 Act. Learned counsel also relied on Section 132-A and argued that the Commissioner clearly transgressed his jurisdiction by placing the non-official respondents under suspension.

In the context of the last argument of Shri M. Surender Rao, the learned Advocate General invited our attention to order dated 11.07.1995 passed by the Tribunal in R.P. Nos. 6924 and 6925 of 1987- P. Anand Mohan v. Government of A.P., whereby Section 132-A of the 1955 Act was declared unconstitutional.

We have given serious thought to the entire matter. Sections 130, 132, 132-A,141 of the 1955 Act, Sections 14(1) and 16(6) of the 1994 Act, Rule 2 (Category III) and Rule 1 of the ad hoc rules notified by the government vide G.O.Ms.No.1968,MA dated 28.12.1981, which have bearing on the decision of these petitions read as under:

" **130. Local Government Service:** - (1) There shall be constituted for the purposes of this Act and of any law for the time being in force regulating the powers and duties of other local authorities, a Local Government Service consisting of officers and servants of a Corporation who hold any of the posts specified in Schedule C which may from time to time be amended by the Government.

(2) Government shall have the power to appoint, dismiss and transfer and to take disciplinary action against officers belonging to the said service and prescribe conditions of their service.

(3) Unless it be otherwise prescribed under sub-section (2) the Hyderabad Civil Service Rules for the time being in force relating to the appointment and conditions of service and all rules for the time being in force relating to the conduct and enquiry into the conduct of Government servants shall apply to officers belonging to the Local Government Service.

132. Power of Government to appoint other officers: - (1) The Government may, in addition to the officers and servants specified in Schedule C appoint for the purpose of this Act and of any law for the time being in force regulating the duties and powers of other local authorities, duly qualified person or persons to be Superintending Engineer, Chief Town Planner, Divisional Engineers, Assistant Engineer, Assistant Town Planning Officers, Architects, Inspecting Officers or other Officers for the whole or any part of the State and may sanction such establishment for the said officers as may be deemed necessary.

(2) The officers and establishment appointed under sub-section (1) shall belong to the Local Government Service and their expenses shall be defrayed from the Local Government Service Fund constituted under Section 131.

(3) The powers and duties of the officers mentioned in sub-section (1) shall be such as may from time to time be determined by the Commissoner.

132-A. Constitution of a Municipal Corporation Service:

(1) Notwithstanding anything in this Act or the rules made thereunder, the Government may after consulting all the municipal corporations in the State by notification in the Andhra Pradesh Gazette, constitute any class of officers or employees of the Municipal Corporation in the State of the category of Upper (Ward) Clerks and above into a Municipal Corporation Service for the State.

(2) Upon the issue of a notification under sub-section (1), the

Government shall have power to make rules to regulate the classification, methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the Municipal Corporation Service thereby constituted and such rules may vest jurisdiction in relation to such service in the Government or in such other authority or authorities as may be prescribed therein.

(3) Nothing in this section shall affect the operation of the Andhra Pradesh (Telangana Area) Local Government Service (Declaration as State Civil Service) Act, 1956 (Act XX of 1956) in so far as it relates to the municipal officers and municipal employees who are declared to be borne on the State Civil Service as declared under Section 3 of the Act)

141. Power of suspension, punishment and dismissal in whom to vest: - (1) An appointing authority may, subject to the provisions of this Act, impose any of the penalties specified in sub-section (2) on a Municipal Officer or servant if such authority is satisfied that such officer or servant is guilty of a breach of rules made and order issued under this Act or of discipline or of carelessness or neglect of duty or of other misconduct:

[Provided that

(a) no Municipal Officer of servant shall be dismissed or removed by an authority subordinate to that by which he was appointed;

(b) any Municipal Officer or servant may be placed under suspension pending taking of proceedings under this section, by such authority subordinate to the appointing authority as may be prescribed;]

(c) [x x x]

(d) [x x x]

(2) Penalties which may be imposed under this section are the following viz.

(a) Censure, (b) withholding of increments or promotions including stoppage at an efficiency bar, (c) reduction to a lower rank in the seniority list or to a lower post, (d) fine, (e) recovery from salary of the whole or part of any pecuniary loss caused to the Corporation, (f) suspension, (g) removal of Municipal Officer or servant which does not disqualify from future employment, (h) dismissal of Municipal Officer and servant which ordinarily disqualifies from future employment.

(3) No penalty specified in sub-section (2) shall be imposed on any Municipal Officer or servant by any authority unless proceedings are taken in accordance with the provisions of the

Hyderabad Civil Service (Classification, Control and Appeal) Rules.

(4) Subject to the [Proviso to sub-section (1)] any Municipal Officer or servant, on whom any penalty specified in sub-section (2) is imposed by any authority other than the Corporation, may within three months of the communication to him of the order of imposition of the penalty, appeal to the authority immediately superior to the authority imposing the penalty and the appellate authority may, after obtaining the remarks of the authority which imposes the penalty, either confirm the orders passed or substitute for it such orders as it considers just including an order for the imposition of some lesser penalty, and effect shall forthwith be given to any order passed by the appellate authority which shall be conclusive:

[Provided that for the purpose of this sub-section the Corporation shall be the authority immediately superior to the Commissioner.]

14(1): Application of the provisions of the Hyderabad Municipal Corporations Act, 1955 (Act II of 1956): - (1) Save as otherwise expressly provided herein, all the provisions of the Hyderabad Municipal Corporations Act, 1955 (hereinafter in this section referred to as the said Act) including the provisions relating to the levy and collection of any tax or fee except Chapter V and Sections 380, 381, 382, 383, 384, 385 and 387 in Chapter XI thereof are hereby extended to and shall apply mutatis mutandis to a Corporation constituted under this Act and the said Act shall, in relation to the Corporation be read and construed as if the provisions of the said Act had formed part of this Act.

16. Transitional Provisions: - Where a Municipality ceases to exist and a Municipal Corporation is constituted in its place under this Act,-

(6) notwithstanding this Act, every officer or employee who, immediately before such commencement was in the service of the Municipality shall be deemed to be an officer or employee of the Corporation:

Provided that, -

(i) the terms and conditions applicable to such officers and employees consequent on their absorption in the service of the Corporation shall not be less favourable than those applicable to such employees immediately before such commencement, as pay and allowance, leave, pension, gratuity, provident fund and age of superannuation; and

(ii) the service rendered by any such officer or other employee under the Municipality upto such commencement shall be deemed to be in service under the Corporation and he shall be entitled to count that service for the purpose of increments, leave, pension or provident fund and gratuity:

Provided further that any officer or other employee serving in the Municipality shall given an option to be exercised within such time and in such manner as may be prescribed either to be absorbed in the service of the Corporation or to be retained in the service constituted, under Section 72 of the Andhra Pradesh Municipalities Act, 1965 (Act VI of 1965), or to be retrenched from the service of the Municipality on such retrenchment benefits as may be prescribed.

ADHOC Rules

APPENDIX

NOTIFICATION

In exercise of the powers conferred by sub/section (1) of Section 235 read with Section 139 of the Hyderabad Municipal Corporation Act, 1945 (Act II of 1956) the Government of Andhra Pradesh hereby makes the following adhoc rules.

ADMCC RULES

1. The appointing Authorities for the posts mentioned in column (2) of the table below shall be those specified against each in column(3) thereof:

Sl.No. (1)	Post (2)	Appointing Authority (3)
1)	All posts upon and inclusive of the post of Lower Division Clerks or any other equivalent next Carrying the same or similar scale of pay	The Commissioner, Municipal Corporation of Hyderabad.
2)	All posts upon and inclusive of Upper Division Clerks or any other Equivalent post carrying the same or similar scale of pay	The Standing Committee
3)	All posts upon and inclusive of the post of Superintendent of any other equivalent post carrying	The Corporation

	the same or similar scale of pay	
4)	In respect of all other posts.	The Government.

Having noticed the relevant statutory provisions, we shall now consider whether the cases of the non-official respondents are covered by the provisions of Sections 130 and 132 of the 1955 Act and, therefore, the Commissioner could not have exercised power under Section 141 of that Act to suspend them.

A reading of Section 130(1)(2) makes it clear that the officers and servants of a Corporation holding any of the posts specified in Schedule C are members of Local Government Service and only the State Government has the power to appoint, dismiss, transfer and take disciplinary action against the members of that service and prescribe conditions of their service. Section 132(1) empowers the State Government to appoint for the purpose of 1955 Act or of any other law for the time being in force regulating the duties and powers of other local authorities, duly qualified persons as Superintending Engineer, Chief Town Planner, Divisional Engineer, Assistant Engineer, Assistant Town Planning Officers, Architects, Inspecting Officers or Officers. Such officers are in addition to those holding the posts specified in Schedule C which finds a mention in Section 139(1) and they too become member of the Local Government Service.

A perusal of Schedule C shows that the posts of Attender, Junior Assistant, Senior Assistant and Town Planning Supervisor do not find mention therein. Therefore, the non-official respondents cannot be treated as members of Local Government Service within the meaning of Section 130(1) of the 1955 Act and the State Government cannot be treated as ‘disciplinary authority’ in terms of

Section 130(2). In so far as Section 132 is concerned, it is neither the pleaded case of the non-official respondents nor any material has been placed before the Court to show that the State Government had appointed them for the purpose of the 1955 Act or any other law regulating the duties and powers of the Corporation or that they were appointed as part of the establishment sanctioned under Section 132. Therefore, the view taken by the Tribunal that the State Government alone has the power to take disciplinary action against the applicants (the non-official respondents herein) is clearly erroneous and unsustainable.

As a corollary to the above conclusion, it must be held that in his capacity as the appointing/disciplinary authority, as contemplated by Rule 18 of the 1987 Rules read with Rule 1 of the ad hoc rules, the Commissioner could exercise power under Section 141 of the 1955 Act for suspending the non-official respondents and the orders passed by him suspending the non-official respondents do not suffer from any legal infirmity.

The argument made by Shri M. Surender Rao with reference to Section 132-A of the 1955 Act is liable to be rejected because that section was struck down by the Tribunal as early as in 1995. In deed, it is not even the pleaded case of the non-official respondents that the order passed by the Tribunal in R.P. Nos. 6924 and 6925 of 1987 has been set aside by any constitutional Court.

In the result, the writ petitions are allowed. Orders dated 08.03.2006, 08.03.2006, 08.03.2006, 08.03.2006, 04.10.2005, 16.11.2005 and 08.03.2006 passed by the Tribunal in O.A. Nos. 4394, 5888, 5891, 3327, 5887 and 6152 of 2005 and 909 of 2006 respectively are set aside and the applications filed by the non-official respondents are dismissed.

G.S. SINGHVI, CJ

June 15, 2007

C.V. NAGARJUNA REDDY, J

svs